

# **EXHIBIT 26**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

Case No. 3:17-cv-00939-WHA

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WAYMO LLC,	)
	)
Plaintiff,	)
	)
v.	)
	)
UBER TECHNOLOGIES, INC.;	)
OTTOMOTTO LLC;	)
OTTO TRUCKING,	)
	)
Defendants.	)

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HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF

JOE SULLIVAN

DATE TAKEN: DECEMBER 14, 2017

REPORTED BY:

PAUL J. FREDERICKSON, CCR, CSR

JOB NO. 2771274

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1           toward shared communication which allows the           15:17:53  
2           team to really have most information.           15:17:56

3                       So I -- I frequently encouraged           15:18:01  
4           team members to -- to bring their           15:18:03  
5           communications into forums where other people           15:18:05  
6           can see them, like -- like the group chats.           15:18:07

7                       The second reason in the context           15:18:11  
8           of Wickr that I can think of would have been           15:18:13  
9           around data security overseas. Those would be           15:18:15  
10          my best guesses.           15:18:20

11               Q.       Did you ever -- are you aware of           15:18:23  
12          anyone suggesting to use Wickr or other           15:18:26  
13          ephemeral communications to avoid civil           15:18:29  
14          discovery?           15:18:33

15                      MS. CHANG: Objection to the           15:18:39  
16           extent it calls for privileged           15:18:39  
17           communication. I caution the witness           15:18:41  
18           not to disclose the substance of any           15:18:43  
19           privileged communication.           15:18:46

20                      THE WITNESS: Yeah.           15:18:49

21               A.       Then I don't think I -- I mean,           15:18:49  
22          other than that, I can't answer.           15:18:51

23               Q.       Well, I'm going to press for a yes           15:18:54  
24          or no answer on this one.           15:18:56

25                      Are you aware of anyone at Uber           15:18:57

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1	suggesting to use Wickr or another ephemeral	15:18:59
2	communication to avoid discovery in a civil	15:19:02
3	lawsuit?	15:19:05
4	MS. CHANG: Objection, calls for	15:19:06
5	privileged communication. I instruct	15:19:07
6	the witness not to answer.	15:19:09
7	A. If it relates to an existing civil	15:19:11
8	lawsuit, the answer is no.	15:19:15
9	Q. What do you mean by that?	15:19:18
10	A. I mean, I'm not aware of anyone	15:19:22
11	saying "Use ephemeral to avoid discovery in	15:19:23
12	this litigation."	15:19:28
13	Q. But what about in litigation	15:19:31
14	generally?	15:19:32
15	MS. CHANG: Objection, calls for	15:19:34
16	privileged communication. I instruct	15:19:35
17	the witness not to answer.	15:19:37
18	A. So I can't answer.	15:19:43
19	Q. All right.	15:19:44
20	Let me ask it again because I	15:19:46
21	think this is going to be an issue.	15:19:48
22	Are you aware of anyone at Uber	15:19:51
23	suggesting the use of ephemeral litigation to	15:19:53
24	avoid discovery in litigation?	15:19:55
25	MS. CHANG: Objection to the	15:19:59

1 with that in the past. 15:41:42

2 Q. Now, there's a reference to Angela 15:41:43

3 here at the top of the last page? 15:41:51

4 A. I see that, yeah. 15:41:55

5 Q. Who does this refer to? 15:42:07

6 A. Angela Padilla. She's an attorney 15:42:09

7 in the legal department. 15:42:16

8 Q. Was Ms. Padilla advising on the 15:42:18

9 subject matter of her advice? Was it relating 15:42:23

10 to the use of ephemeral communications? 15:42:26

11 MS. CHANG: Objection to the 15:42:28

12 extent it calls for privileged 15:42:29

13 communication. 15:42:31

14 I caution the witness not to 15:42:32

15 disclose the substance of any privileged 15:42:33

16 communication. 15:42:36

17 MR. ANGELI: And to be clear, your 15:42:43

18 question was just about was she advising 15:42:44

19 on the subject matter? 15:42:46

20 MR. JAFFE: That's right. 15:42:47

21 A. Yes. 15:42:49

22 Q. And so after that discussion from 15:42:57

23 Angela that's privileged here, you said next: 15:42:58

24 "In security and in legal, we have 15:43:04

25 been using Wickr for ephemeral chat, and it 15:43:06

1 works well. The messages expire after a day or 15:43:09  
2 a week depending on settings, and the company 15:43:15  
3 has admin control rather than pushing the 15:43:16  
4 settings to employees like WeChat or WhatsApp 15:43:20  
5 or Signal? 15:43:24  
6 A. That's right. 15:43:24  
7 Q. Why did you write that? 15:43:25  
8 A. I have a strong bias towards all 15:43:26  
9 company communications being on company systems 15:43:30  
10 and the company having control. To me, it's a 15:43:34  
11 problem when you have fragmented communications 15:43:41  
12 that are outside of the control of the company 15:43:44  
13 to manage. And so one -- so one of the key 15:43:45  
14 attributes of any kind of enterprise 15:43:51  
15 communication product should be that it be an 15:43:54  
16 enterprise managed product. 15:43:57  
17 Q. How did you -- you wrote here that 15:44:04  
18 legal has been using Wickr for ephemeral chat. 15:44:06  
19 Do you see that? 15:44:11  
20 A. I did. 15:44:11  
21 Q. How do you know that, or how did 15:44:12  
22 you know that? 15:44:14  
23 MS. CHANG: Objection to the 15:44:16  
24 extent that it calls for privileged 15:44:16  
25 communication. 15:44:18

1           A.       So are you talking about -- you're   16:59:07  
2       switching over to talk about SSG right now, or   16:59:09  
3       are you talking about the marketplace analytics   16:59:12  
4       team?   16:59:14

5           Q.       That's fair. Let's stick with       16:59:14  
6       marketplace analytics.                             16:59:16

7           A.       Okay.                               16:59:18

8           Q.       Do you have personal knowledge     16:59:19  
9       whether the marketplace analytics team as a       16:59:21  
10      whole stole trade secrets or not?                16:59:24

11          A.       I would be shocked if they had     16:59:29  
12      engaged in something like that. My             16:59:32  
13      understanding was that their mission related    16:59:35  
14      exclusively to one type of work, which was the 16:59:38  
15      scraping, and that that work was directly       16:59:42  
16      overseen by a number of lawyers, and -- and    16:59:47  
17      that was the limitations to their work.         16:59:50

18          Q.       Okay.                               16:59:52

19                   And going forward, it says, just    16:59:53  
20      that same sentence, it talks about:             16:59:56

21                   "Carried out their efforts in       16:59:57  
22      partnership with SSG."                           16:59:59

23                   Do you see that?                   17:00:00

24          A.       I do.                                17:00:01

25          Q.       So talking about SSG and           17:00:02

1 other whether the SSG team used nonattributable 17:48:41  
2 devices? 17:48:45

3 A. That's right. 17:48:45

4 Q. But you do know that the Threat 17:48:45  
5 Ops team did? 17:48:47

6 A. Correct. 17:48:48

7 Q. And that includes for competitive 17:48:48  
8 intelligence activities; right? 17:48:51

9 A. The Marketplace Analytics team, 17:48:52  
10 yes. 17:48:54

11 Q. Towards the bottom of the page, 17:49:08  
12 last paragraph: 17:49:10

13 "By storing this data on 17:49:11  
14 nonattributable devices, Uber believed it would 17:49:12  
15 avoid detection and never be subject to legal 17:49:15  
16 discovery." 17:49:18

17 Do you see that? 17:49:19

18 A. I do see that. 17:49:20

19 Q. Is that accurate? 17:49:24

20 MR. ANGELI: Objection, lacks 17:49:26  
21 foundation, compound. 17:49:27

22 A. I highly doubt it. 17:49:28

23 Q. What do you mean you highly doubt 17:49:30  
24 it? 17:49:31

25 A. I mean, I have no knowledge -- I 17:49:31



1 don't know what Mr. Jacobs was referring to 17:49:35

2 here, but I have never seen anyone at Uber act 17:49:36

3 with the belief they could avoid detection and 17:49:40

4 legal discovery by using nonattributable 17:49:43

5 devices. The context in which my team used 17:49:45

6 nonattributable devices was for purposes of its 17:49:48

7 interactions out on the Internet, not for 17:49:51

8 purposes of hiding itself inside the company. 17:49:53

9 Q. And this goes on and says: 17:49:57

10 "This is because the standard 17:49:59

11 preservation of evidence order typically 17:50:01

12 focused on Uber work laptops, Uber networks and 17:50:03

13 Uber mobile devices. Nonattributable devices 17:50:07

14 were deemed as not reasonably subsumed by any 17:50:09

15 preservation order, and the team could and did 17:50:12

16 'legally,' not so, dispose of any evidence or 17:50:15

17 documentation held on these devices in the 17:50:20

18 intervening period before knowledge of the 17:50:22

19 devices' existence could be uncovered." 17:50:24

20 Do you see that? 17:50:26

21 A. I do. 17:50:30

22 Q. Is that accurate? 17:50:31

23 MR. ANGELI: Objection, lacks 17:50:32

24 foundation, compound. 17:50:33

25 A. Which part are you talking about? 17:50:34

1 Do you know whether anyone at Uber 17:52:54  
2 was ever instructed to use nonattributable 17:52:56  
3 hardware or software to prevent documents from 17:52:58  
4 being subject to legal discovery? 17:53:01  
5 MR. ANGELI: Objection, compound. 17:53:04  
6 A. I have never heard of that 17:53:05  
7 happening. 17:53:07  
8 Q. Continuing on here in the letter, 17:53:07  
9 and we're on page 8. The title says: 17:53:20  
10 "Concealment, coverup and 17:53:25  
11 falsification of records through the abuse of 17:53:28  
12 attorney-client privilege designations." 17:53:30  
13 Do you see that? 17:53:33  
14 A. I do. 17:53:33  
15 Q. And it says here: 17:53:34  
16 "Clark developed training on how 17:53:36  
17 to use attorney-client privilege to further 17:53:37  
18 conceal activities described in any 17:53:39  
19 non-ephemeral communication channel. 17:53:41  
20 Specifically he developed training using 17:53:43  
21 innocuous legal examples and the lawyer dog 17:53:45  
22 meme to produce a slide deck that taught the 17:53:49  
23 Threat Ops team how to utilize attorney-client 17:53:52  
24 privilege to impede discovery." 17:53:55  
25 Do you see that? 17:53:57

1 I, PAUL J. FREDERICKSON, CA  
2 Certified Shorthand Reporter No. 13164 and  
3 WA Certified Court Reporter No. 2419, do  
4 hereby certify:

5 That prior to being examined,  
6 the witness named in the foregoing  
7 deposition was by me duly sworn or affirmed  
8 to testify to the truth, the whole truth and  
9 nothing but the truth;

10 That said deposition was taken  
11 down by me in shorthand at the time and  
12 place therein named, and thereafter reduced  
13 to print by means of computer-aided  
14 transcription; and the same is a true,  
15 correct and complete transcript of said  
16 proceedings.

17 I further certify that I am not  
18 interested in the outcome of the action.

19 Witness my hand this 15th day  
20 of December 2017.

21

22

23

24

25



PAUL J. FREDERICKSON, CCR, CSR

WA CCR 2419 CA CSR 13164

Expiration date: March 31, 2018